INSANITY:

IN ITS RELATIONS TO CRIME.

W. A. HAMMOND.

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INSANITY

IN ITS RELATIONS TO CRIME.

A TEXT AND A COMMENTARY.

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BY

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"SALUS POPULI SUPREMA LEX EST."

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IN

THE HOPE

THAT WHAT I HAVE WRITTEN

WILL COMMEND ITSELF TO HIS APPROVAL,

I Dedicate this Essay

TO MY FRIEND

THE HON. MICHAEL C. KERR,

OF THE STATE OF INDIANA,

WHOSE BROAD AND ENLIGHTENED VIEWS,

ON ALL SUBJECTS CONNECTED WITH POLITICAL AND SOCIAL ECONOMY,

HAVE ALWAYS COMMANDED

MY EARNEST ADMIRATION.

PREFACE.

A PART of this essay, under the title "Society *versus* Insanity," was contributed to *Putnam's Magazine*, for September, 1870. The greater portion is now first published. The importance of the subject considered can scarcely be over-estimated, whether we regard it from the stand-point of science or social economy; and, if I have aided in its elucidation, my object will have been attained.

NEW YORK, *April* 20, 1873.

INSANITY IN ITS RELATIONS TO CRIME.

I.

THE TEXT.

LEGER.[1]

On the 10th of August, 1824, a young girl of the canton of Ferté Aleps, Aimée Constance Debully, aged about twelve years, left her home at four o'clock in the afternoon, to go to a vineyard situated about a quarter of a league distant. Toward night her parents, as she did not return, became anxious, for a wolf had recently been committing ravages in the vicinity, and they feared that their daughter might have fallen into his clutches. They went to the vineyard, searched it and the whole neighborhood, but they found only her hat, shoes, and pruning-knife, arranged in order near a large vine.

Other attempts were made by the friends and neighbors, and by the local authorities, but for five

[1] The particulars of this case are taken almost literally from the "Causes Célèbres," tome vii., liv. 117, Paris.

days nothing giving the slightest clew to the object of their search was discovered. A handkerchief was found at a little distance from the vineyard, but it did not belong to the lost child. At last, on the 16th of August, a party of villagers from Cerny, who were engaged in searching for some trace of the girl, perceived a fissure in a large rock, which was partially closed by withered branches, apparently quite recently disturbed. Tearing them away, they found a quantity of hay, straw, and leaves, so arranged as to conceal the opening of a cave, into which they at once entered. The remains of various articles of food, and a bed of hay and moss, revealed the fact that the cave had recently served as a place of habitation. An offensive odor, which filled the cave, led to additional researches, and, in a few moments, they discovered, buried in the sand in a remote corner of the cavern, a dead body, already in a state of putrefaction. A chemise, a petticoat, and a handkerchief, were bound around it with withes of oak. The father and the mother of the young girl recognized the body as that of their lost daughter.

Notified of this discovery, and of the probability that a crime had been committed, the authorities assumed the charge of all further proceedings. A surgeon who examined the corpse ascertained that the body had been opened throughout its whole ex-

tent by a sharp instrument, and that numerous and deep wounds had been made in various parts of the body by the point of the same weapon. The head and the neck were gorged with blood, while the heart and neighboring large vessels were empty.

Anxiety and terror prevailed throughout the district, and every effort was made to discover the perpetrator of the horrible crime. The peasants and the police examined with the utmost care every traveler upon whom they could lay their hands, thinking in each one to detect the assassin. They little knew that he was already in custody.

On the 12th of August, two days after the disappearance of the young girl, and four days before the finding of her body, an officer of the canton had perceived in a forest, seated near a spring, a man who was unknown to him. His appearance was singular, and his clothing was in disorder. The officer approached him, but the man hastily rose and disappeared in the depths of the wood. The following day the officer watched the spring, and in the evening when the man returned to it he arrested him.

The man declared that he was named Antoine Léger, of St.-Martin Bretencourt, in the canton of Dourdan, and that he had left his family suddenly on St. John's day, taking with him the sum of fifty francs. "I walked," said he, "for a day and a half

in the forest, when you arrested me. I do not know where I shall go; probably wherever my despair leads me." When taken before the *adjoint de la commune*, he stated that he was an escaped convict, and he related how he had broken his chains at Brest, and had scaled the walls of his prison.

These singular and contradictory statements, the absence of all papers, the finding of two knives on his person, one with a remarkably sharp blade, constituted a series of suspicious circumstances which led to his detention as a vagrant, if nothing more.

In the jail, Léger told the other prisoners that for fifteen days he had slept in the woods and crevices of the rocks. "But," replied his companions, "what did you eat since you kept away from the villages?" "Pears, artichokes, and wheat," he answered.

This conversation reached the ears of the authorities, and at once excited suspicion, for, in the cave where the body of the young Debully had been discovered, the remains of artichokes, pears, and wheat, had also been found. Moreover, several women declared that, some time before the disappearance of the girl, they had met in the vicinity of the cavern a man whose unusual features and swarthy complexion had surprised and frightened them. Confronted with Léger, they recognized him as the man they had seen,

and who had even accosted some of them in the forest.

It was then remembered that a handkerchief, striped in blue and white, had been found not far from the vineyard; on comparing this with another in Léger's possession, it was perceived that both were made from the same piece of cloth, hemmed with the same kind of thread, and in a similar manner. Then the body, having been exhumed, the wounds were compared with the sharp knife taken from the prisoner's person, and they were found to correspond exactly.

Léger, who had continued to deny all knowledge of the crime, could no longer resist the force of the evidence accumulating around him. Taken to the place where the outrage had been committed, brought into the presence of the corpse of his victim, pressed with questions by the judge, faint-hearted and trembling, he allowed the terrible confession to escape him. "Ah, yes," he exclaimed, "it was I who perpetrated the crime;" and then he went on to detail all the particulars with the utmost minuteness. From his own account and from other evidence the following facts were elicited:

Léger had, as he declared, left his home on St. John's day (June 20th) with the avowed pretext of hiring himself out to domestic service at Dourdan,

but, in reality, with the firm intention of removing himself from all family influence, and of living in a state of absolute isolation. Besides the sum of fifty francs, he had nothing but his clothing. Instead of going to Dourdan, he had gone directly to Etampes, where he had passed the night at an inn. The next day he reached Ferté Aleps, and stopped near that town, in the woods which overlook the hamlet of Montmirault. He at once searched through the forest for a retreat which would protect him from the inclemency of the weather, and discovered the cave of which mention has been made, and in which he took up his habitation.

During the first two weeks he lived on roots, pears, currants, wheat, and other vegetables which he gathered in the valley on the confines of the wood. About the first of August he got up in the night, and stole some artichokes from a garden in the neighborhood.

One day, having surprised and captured a hare, he killed it and ate it raw on the spot. Overcome with hunger, he went one evening at nine o'clock to Ferté Aleps to purchase some bread and cheese. He repeated his visit for the same purpose, and at the same hour, several times. But, in the midst of his solitude, he was tormented with violent passions; he experienced the horrible desire to eat human flesh,

and to drink human blood. The occasion soon presented itself, and he at once took advantage of it.

On the 10th of August, while wandering in the wood, he found himself, about four o'clock in the afternoon, on the heights which overlook the valley of Itteville. In a vineyard near the borders of the wood he saw a young girl, and he at once conceived the idea of carrying her off to satisfy the worse than brutal passions which possessed him. The girl was alone. Some shepherds and laborers were scattered about the plain, but they were too far off to hear her cries, to come to her assistance, or even to notice his actions. He rapidly descended the hill-side, rushed like a savage beast on the child, who, seated on the ground with her back toward him, did not see him approach, wound his handkerchief around her neck, lifted her to his shoulders, and plunged swiftly with her into the depths of the forest.

Then exhausted with his effort, and perceiving that his victim did not move, he threw her on the ground. Part of his crime was already accomplished, for life was extinct. He then proceeded to quench his thirst with her blood. . . . His brutal rage being appeased, Léger enveloped the body in the garments which had covered it, and bound them around it with a strong oak branch which he cut from a tree near by. He then carried it to the cave and buried

it in the sand. Then, fearing that the emanations from the corpse would be perceived, he closed with care the opening into the cavern, and, after having washed his face, his hands, his knife; after having torn off the collar and sleeves of his shirt, soiled with the blood of his victim, and concealed them under a rock, tormented by remorse, and not being able to sleep, he departed two hours before day from the theatre of his crime. From that time till the hour of his arrest he had wandered aimlessly through the woods and mountains.

The confession of this wretch accorded perfectly with the state of the corpse, and with all the discoveries made during the preliminary examinations. Conducted to the places he had mentioned, Léger showed the spot where he had stopped to consummate his crime, upon which some bloody stains could still be seen; he pointed out the oak from which he had cut the withe, and the branch from which he had taken it was identified; finally, he indicated the rock under which he had hidden the collar and sleeves of his shirt, and they were found as he had described.

The examination had now only reference to the antecedents of the accused. It was ascertained that he had at first been an agricultural laborer, then a fagot-gatherer since the age of fifteen. In 1815 he entered the army, and was in garrison at Soissons.

On the return of the Bourbons he had resumed his former labors. From his youth he had been morose and sombre, habitually seeking solitude, and avoiding the society of women and of young men of his own age.

From the moment of making his confession, Léger preserved the most astonishing degree of *sang froid.* To all the questions concerning his crime, his only answer was "Yes," pronounced with entire indifference. Léger was sent before the Court of Assizes of Versailles, where he appeared on the 23d of November, 1824, accused, first, of robbery, attended with breaking open; second, of *attentat à la pudeur*, perpetrated with violence; third, of voluntary homicide, committed with premeditation and lying in wait.

The accused was dressed in the ordinary garb of a peasant. His long hair, his unshaven face, his swarthy visage, gave to his countenance an expression at once of stupidity and gentleness. His eyes were downcast; his expression fixed. He preserved the most profound impassibility, and an air of gayety, even of satisfaction, appeared on his face.

During the reading of the act of accusation, Léger maintained the most imperturbable tranquillity; though, from time to time, he glanced at the clothes of his victim, the oaken withe, and the knife which had served him in his murderous crime, and which

lay on a table near him. From the details of the examination of the prisoner conducted by the president of the court, I select such portions as bear with any force on the main features of the case.

Question.—Why did you leave your parents?

Answer.—Because I was sick; I had a cold, and I was affected with stone.

In regard to this latter disease, the president remarked that the physicians had not discovered any symptoms of its existence.

Q.—On what did you live during the fifteen days you passed in the woods of Ferté Aleps?

A.—On all sorts of roots; on wild-sorrel, on wild-cherries and currants.

Q.—On the 10th of August, you forced an entrance into a garden at Itteville, from which you stole some artichokes?

A.—I also took some onions, and some ears of wheat.

Q.—What did you drink?

A.—Water, which I collected from the holes in the rocks?

Q.—Did you not often conceive the idea of carrying a woman to the cave?

A.—I had the idea, but I did not do it. Despair led me to take up my abode there; my mind was gone. I had desires, but I did not wish to gratify them.

Q.—You have stated in your preliminary examination that you feared the resistance of an adult woman. Did you also fear that her cries would attract the attention of the passers-by?

A.—Yes, sir.

Q.—At what o'clock did you go out of your cave, on the 10th of August?

A.—I was not regular in the hour of going out. About half-past three.

Q.—What did you do that day at about four o'clock?

A.—I went to get some apples. I saw, at the end of the wood, a little girl who was seated on the ground with her back turned toward me; I determined to carry her off; I wound my handkerchief around her neck and threw her on my back; she only uttered a slight cry; I went through the wood to the place I have shown; I was thirsty, hungry, and hot; I waited perhaps half an hour unconscious; then my thirst and hunger overcame me, and I proceeded to devour her.

Q.—In what state then was the girl?

A.—Motionless; she was dead. I only tried to eat her; that is all.

The president admonished the prisoner to speak the truth. Léger, however, denied all facts touching

the condition of the body, though he had confessed them in the preliminary examination.

The president then read the previous answers. "The blood had poured forth. He had quenched his thirst with it. 'Urged by the evil spirit which governed me, I drank the blood from her heart.'"

To this the prisoner replied that he had said nothing of all that, and that the judges had written what they pleased.

The president observed that this was the first time he had pretended to be sick when he threw the young girl on the ground, and that as to the violation of the body, the physicians had very clearly established the fact.

Q.—What did you do with the remains of the body?

A.—I buried them at the end of the cave, and I closed the entrance with weeds and all sorts of things; then I went away, because the birds came and croaked at me.

Q.—What kind of birds?

A.—Crows. I thought they came to seize me, because they croaked at me.

Q.—You were then agitated by fear. You felt that you had done wrong?

A.—Yes; when I recovered my consciousness I went and hid myself in the rocks and could not sleep;

I had not my mind about me; the next day I walked to the fields beyond the hills; I washed myself with water which I found on the rocks, and I also washed my shirt; I cut off the collar and the sleeves, which were bloody; there I met one of the guard and I fled; when I saw any person I hid myself; the guard cried, "Halt in the name of the king!" and I was at once arrested.

Q.—What do you wish to say about the young Debully?

A.—I was unconscious; I was urged by the evil spirit.

The president then directed the shirt taken from the accused to be shown to him. The sight did not in the least disturb him; he continued to preserve the same smile on his lips, and the same expression of calm pleasure which he had exhibited from the beginning of the trial.

On hearing the testimony of the father and mother, and asked what he had to say, he uttered a few words of regret and shed a few tears.

Dr. Ballert, one of the physicians who had made the *post-mortem* examination of the deceased, declared that death had been produced by asphyxia resulting from strangulation or smothering. The incisions in the body appeared to have been made before death, and the *attentat à la pudeur* consummated before life

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was extinct. The doctor further testified that he had confronted the prisoner with the corpse, and that at first Léger denied that he was the assassin, but that his countenance belied his words. "Wretch," exclaimed the doctor, "you have eaten the heart of this unfortunate child?" "Yes, I have eaten it," answered Léger, trembling, "but I did not eat it all." He added that the child was quite dead. He continued to deny the *attentat à la pudeur*.

Some other less important evidence was given, and then the counsel began to address the jury.

The *procureur du roi* (an officer corresponding to our district attorney) stated the facts contained in the indictment. After reminding the jury that the accused had confessed his crime, he contended that there could have been no unconsciousness of the nature of the deed committed. That of this fact the prisoner himself had furnished the proofs by the precautions he had taken to efface all traces of his act; by the horror which the recollection of it had excited in him; by the inability to sleep, and the remorse which had filled him. "An insane man," said the *procureur*, "would have slept near his victim, but Léger was forced to fly, and it had even seemed to him that the birds came to reproach him with his cruelty."

M. Benoit, who appeared for the prisoner, after

saying that reason refused to believe in the existence of such a crime committed by a man in the exercise of his intellectual faculties, endeavored to convince the jury that Léger was certainly insane. His habits, his conduct, his sudden flight from the house of his parents, the kind of life to which he had condemned himself, all evidently demonstrated the absence of reason in the assassin. The counsel insisted that the question of mental alienation should be embraced among the propositions submitted to the jury.

The president, in his charge, cited the points of evidence produced by the prosecution, and the extenuating circumstances alleged on the part of the defense.

The jury, after deliberating an hour, returned with a negative verdict in regard to the proposition of mental alienation, and an affirmative of all the other questions.

The court then sentenced Léger to death. The prisoner heard his condemnation with the same degree of impassibility which he had shown during the whole course of the debate.

He was executed on the 1st of December, 1824, showing so much weakness during his last moments that he had literally to be carried to the scaffold.

A special study of this remarkable case was

made by Georget,[1] and the conclusion arrived at by this eminent alienist that Léger was insane. His melancholic disposition, his sudden and unreasonable flight from his home, the depravation of his appetites, the horrible and sudden perversion of his moral sense, were entirely characteristic of mental alienation. The autopsy was made by Esquirol and Gall, in presence of several other physicians, and indubitable evidence of brain-disease was discovered. In several places the membranes were adherent to the cerebral substance, and to each other.

JOBARD.[2]

On the evening of the 15th of September, 1851, the drama entitled "Adrienne Lecouvreur" was being acted at the Theatre of the Celestins, in Lyons. It was about half-past eight o'clock, and the curtain had risen on the second act of the play, when a horrible event occurred, which threw actors and audience into a state of confusion and fright. A young lady had been stabbed to the heart by a man who sat immediately behind her. Uttering a cry, she drew the dagger from her breast and fell, lifeless and covered with blood, into the arms of a lady near her.

[1] "Examen des Procès Criminels de Léger, Lecouffe, Feldtmann et Papavoine dans lesquels l'Aliénation mentale a été invoquée comme moyen de défense." Paris, 1825.

[2] "Causes Célèbres," *loc. cit.*

The man who had killed her remained standing erect, his arms crossed on his chest, and his manner perfectly impassible. The husband of the young lady, ignorant of the fatal nature of the wound his wife had received, seized the assassin. "What have we done to you," he exclaimed, "that you should commit this outrage?" "Nothing," answered the man; "I do not even know you; I am a miserable wretch—do with me what you please; I do not wish to escape." He was at once arrested, and, without opposing the least resistance, was conducted to the nearest police-station.

The young lady thus murdered had only been married a few months, and was visiting Lyons with her husband, a professor in a college at Limoges.

The murderer was named Antoine Emanuel Jobard, and was a clerk in a mercantile establishment at Dijon. He was but twenty years old. His parentage was respectable, and his education had been well cared for. During the four years he had lived at Dijon he had, to all appearances, conducted himself well. His conduct, nevertheless, had not in reality been so exemplary as it had seemed to be.

Soon after his arrest, Jobard was visited by the magistrate, who interrogated him minutely in regard to all the circumstances in any way connected with the crime. To all questions he replied calmly and

respectfully, without evincing the least emotion. As he declared in the first instance, he did not even know his victim; seated behind her for an instant only, he had not seen her face. He had only perceived that she wore a gray silk dress, and he had looked at her no longer than was sufficient for him to determine where to strike. "I have killed her to be killed in return;" he repeated many times—"to be killed after I have had sufficient time for repentance.

"In the midst of the pious family in which I lived," he continued, "I observed all the outward ordinances of religion, but I was at heart a hypocrite. I led an abandoned and depraved life, and yet I deceived everybody by my apparent devoutness. I became disgusted with myself, but had not the strength to abstain from the shameful vices that enslaved me. Not being able to change my conduct, I resolved to get rid of my life. I could not think of suicide, for that crime would have resulted in my appearing before God loaded with sins. I therefore determined to do something which would cause me to be condemned to death by the law. I would thus have a sufficient time for repentance, and I was satisfied that I would also obtain pardon of God for all my offences."

He then went on to state that he had endeavored to do as little harm as possible in obtaining his end.

He had not killed a depraved person, because that would have sent one unprepared for death into the presence of God. He had thought of killing a priest just after he had celebrated mass. Accident had led him to Lyons and to the theatre. Here the victim and the opportunity were at once offered him.

When asked if he fully comprehended the enormity of his crime, he replied that he did, but that he intended to repent.

During the whole course of Jobard's interrogation he remained perfectly calm and apparently emotionless; his pulse was not accelerated above the normal standard—beating with regularity sixty-six times a minute; his answers were given with deliberation and exactness.

The following day he was confronted with the corpse of the murdered woman. On his way to the hotel he expressed his disinclination for this ceremony, declaring that it was useless, as he would not be able to recognize her. In going up the stairs his legs gave way under him; he trembled in every muscle, and a cold sweat broke out on his body. Brought face to face with the corpse, he exclaimed that he did not recollect the face; he only knew that the wound was where he intended to make it. At the same time his countenance expressed horror and fright, and he fell to the floor weeping, and in a state

of extreme prostration. His pulse was feeble, intermittent, and beating sixty-eight times a minute.

It is interesting to study the thoughts of a person situated as was this young man, who, being apparently rational on all other subjects, felt himself impelled by a power, in regard to one, which he was unable to resist. The report given in the "Causes Célèbres" is full, and the custom which prevails in France of frequently interrogating a criminal, whatever its value in jurisprudence, is certainly capable of yielding fruitful results to mental science.

Now, Jobard begins the record of his mental aberration with the statement that he had contracted many grave vices from which he was powerless to abstain. He assumes the impossibility of reform, and at the same time is conscious that he must arrest his course of depravity. Clearly, if these premises are correct, there is but one alternative left, and that is death. He declares this with perfect distinctness; the force of it overpowers him; he constantly regrets the necessity, but his determination does not waver. At first he thinks of suicide, but he soon rejects this, for, although he might repent of all his other sins, the act of self-destruction is a crime of so much magnitude as to condemn his soul to everlasting punishment, and from this sin he would have no time to repent.

Then the idea that he must commit an act which would forfeit his life to the state took possession of his mind. For then, no matter what the crime, he would have ample opportunity between the period of its commission and his execution to make his peace with God. During six months he thought almost continually of this subject, and the *necessity* became daily more apparent. He must die, and he must kill some one in order to die with safety to his soul. "I wish," he exclaimed, during one of his interrogations, "that I could have been condemned to death for some trifling offence. I regret having been obliged to commit murder. It was, however, necessary. I regret this necessity."

On the 18th of September he was again interrogated. He then declared that he had always understood that his crime was one for which he was responsible both to God and man. "But," he added, "my character was weak, impressionable, and changeable. When I prayed, I prayed like a saint; an instant afterward sin claimed me, and I delivered myself without resistance to my false ideas. As to the liberty of acting freely, I was free certainly, and I would have stopped had I been able to comprehend the falsity of my reasoning. My action was criminal, I know, and I went on toward it without reflection. If I could have thought correctly, if I could

have confided my thoughts to some one and been advised, I would never have committed the deed." Then he added: "The course of my ideas is very different to-day from what it was yesterday. To-day, if I could go back, I would not do what I have done; I begin to see things differently."

One night, while in prison, he had the hallucination that his victim appeared to him. He complained of headache, his vision was confused, thought of every kind gave him pain in the head, and he had a profuse hemorrhage from the nose, after which he felt better.

Several physicians examined him before his trial, and, as is usual in every case which admits of a difference of judgment, and as always will be till human reason becomes infallible, different opinions were formed of his mental condition.

Thus, one of the physicians, M. Magaud, saw in Jobard a man led away by a violent passion which he had allowed to assume a governing influence over his mind, but which at one time certainly he might have controlled; a man, moreover, who had had a clear idea of his responsibility, and who had prepared with intelligence and with great firmness of will all the details of his criminal scheme.

The others, MM. Gromier and Tavernier, arrived at an entirely opposite conclusion. Taking into con-

sideration the antecedents of Jobard's life, the circumstances attending the commission of the murder, his subsequent conduct, and the physical and mental phenomena exhibited by him while in confinement, they expressed the opinion that the act was committed while he was suffering from an attack of homicidal and suicidal mania, and that he ought not to be held accountable for a violation of law perpetrated without the influence of his natural will.

Dissatisfied with these contradictory views, the Government commissioned Dr. Gensoul to examine the prisoner, and he coincided with MM. Gromier and Tavernier.

The conclusions of these three physicians were: 1. That at the moment of committing the murder Jobard was suffering from a paroxysm of homicidal mania. 2. That he ought not to be considered responsible for an act done without the participation of his normal will. 3. But, as this kind of insanity is dangerous to society, society has the right to put Jobard in such a position as will render it impossible for him to do further harm, and that therefore he should be placed for life in a lunatic asylum.

Nevertheless, Jobard was indicted and tried for murder with premeditation.

The trial was long, and several medical witnesses, including those mentioned, appeared for one side or

the other. The jury, after an absence of only ten minutes, came into court with a verdict of guilty as to the homicide and the premeditation, but with extenuating circumstances. He was then condemned to imprisonment for life at hard labor.

Considerable sympathy was manifested for Jobard throughout France, and even the Government exhibited an exceptional leniency toward him. He was allowed to delay his departure for the galleys, and, soon after his arrival at Toulon, ostensibly as a reward for good conduct, was permitted to open a small shop, and sell tobacco and little articles of various kinds to the convicts. He remained, however, incapable of fixing his attention, and still continued to suffer from pain in the head. He had no further exacerbation of his malady.

JULES —.

On the 10th of November, 1854—as related by M. Devergie,[1] in a memoir read before the Imperial Academy of Medicine, at Paris—a young man, aged nineteen, the son of a prominent merchant of Bordeaux, dined with his father, to whom he was much attached, and his step-mother, whom he had regarded with gradually-increasing aversion for several years.

[1] "Où finit la raison? Où commence la folie?" Mémoires de l'Académie Impériale de Médecine, tome xxiii., p. 1. Paris, 1859. *See* also *Psychological Journal*, No. xvi., p. 533.

The dinner passed without any unusual incidents till dessert, when young Jules left the table and repaired to the drawing-room to warm himself. Not finding a fire kindled, he went to his own chamber, took his fowling-piece, and started out for a stroll through the country, as was his custom. He had not left the house, however, before the idea of suicide, which had haunted his mind for several weeks, suddenly recurred to him, and was as suddenly changed into the thought of killing his step-mother.

Without stopping one instant, he threw aside his fowling-piece, and going to his brother's room took two pistols which had been loaded three weeks. He had pistols of his own which he might have taken, and which had been charged only the day before.

He descended into the dining-room, approached his step-mother, who was still at the table with his father, and, pointing a pistol at her head, discharged it, with instantly fatal effect.

Madame X. fell to the floor, and the young man, recoiling, rested motionless against the wall. His father rose to seize him, but, a temporary feeling of self-preservation being aroused in Jules, he fled across the kitchen, through the midst of the terrified domestics, and escaped from the house, crying: "I am a madman, an idiot; I have killed my step-mother!"

He soon, however, changed his mind, and sur-

rendered himself to the commissary of police, to whom he related all the circumstances of the crime.

Before and until the murder, the life of this young man had been exemplary. He had performed his duties in the counting-house of his father with assiduity, and was an excellent son and brother. Though rich, he had studiously avoided dissipation of every kind.

Such were the obvious features of the homicidal act. Jules was tried before the Imperial Court at Pau. Calmeil, Tardieu, and Devergie, the most eminent alienists in France, testified in favor of the insanity of the prisoner, and he was acquitted on that ground.

But it was mainly through the evidence of the last of the physicians named that this result was brought about. Instead of confining his testimony to abstract theories, Devergie dwelt at length upon the concomitant circumstances of the homicide, the antecedents of the accused, his several characteristics, and his conduct subsequent to the deed. From the inquiries which he made he ascertained that the young man had among his ancestors a maternal uncle who had a propensity to suicide, and who died insane; another maternal relative who had all his life been eccentric, and a paternal aunt who had actually killed herself.

It was also developed that the accused had always been subject to motiveless outbursts of passion. One day he struck a servant with his whip for not being sufficiently active in obeying an order, and another day he became furiously angry because he could not at once enter a room where his stepmother was taking a bath. "When he became very angry," said one of the witnesses, "he always seized upon something or some one."

He had also been contemplating suicide, and, a month before the offence, had given his views at length upon the subject to Dr. Burnet. He was taciturn in disposition, and avoided the companionship of young men of his own age.

In his own account of the act, he said:

"When I ascended to my room on the day of the crime, I was not thinking of any thing. I should not have gone up-stairs if I had found a fire in the drawing-room. When I reached my room, having no evil intentions, the notion of suicide possessed me; then, my thoughts taking another direction, I threw aside my fowling-piece, ran to my brother's chamber, armed myself with two pistols, and went back to the drawing-room, actuated by I know not what force which dragged me, and in spite of myself. *If my father had addressed to me one word when I entered the drawing-room, a single word, whatever it*

might have been, I should not have killed my step-mother."

The circumstances of the act, it having been committed in broad daylight in presence of his father, and the fact of his having delivered himself up to justice, were also adduced as tending to show an absence of criminality.

On the other hand, there was the hatred he was known to have entertained for his step-mother; and this was argued by the prosecution as a proof that the act was premeditated and malicious.

As I have said, the prisoner was acquitted, but public opinion was very much against him, so much so that he left France and went to reside in Belgium. As is usual in such cases, the press, conducted as it too frequently is by irresponsible persons, ignorant of the first principles of mental science, raised a furious outcry against the medical experts. They were accused of having been actuated by mercenary motives, and of having let loose upon society a monster of iniquity, whose crime should have been expiated on the guillotine. They had simply expounded the sciences of mental physiology and pathology as they understood them, but with nothing like the certainty which, in our day, the ophthalmoscope, the dynamograph, and the æsthesiometer, give to similar investigations. They had arrived at their conclusions

solely by the observation of intellectual phenomena, and not by the employment of physical means. One great source of positiveness was, therefore, wanting.

Now for the sequel.

On the 1st of March, 1859, M. Devergie[1] announced to the Academy that he had within two days received a letter from the brother of the murdered lady. Having indirectly heard of the memoir Devergie had read before the Academy, this gentleman had thought it his duty, in the interests of science and truth, to announce the death of Jules, and to state under what circumstances this event had taken place.

On the 29th of January, 1859, over five years after the homicide, Jules hastily quitted Brussels, where he had lived in great retirement, abandoned his furniture and all he possessed, and reëntered France with nothing but his personal attire. He went to Bordeaux, alighted at a hotel and passed the night there, visiting neither his father nor his brother, who still lived in the city. In the morning he purchased a brace of pistols, hired a cab, was driven to the cemetery, and at his request was conducted to his step-mother's tomb. He then sent away his guide, knelt down on the grave, and, writ-

[1] "Bulletin de l'Académie Impériale de Médecine," tome xxiv., 1858–'59, p. 566.

ing several sentences in his memorandum-book, laid this on the monument, and then with one of his pistols blew out his brains. Among the sentences traced in his memorandum-book was this: "I wish to die upon the tomb of her whom I have so much loved and regretted."

"How," asks Devergie, "shall we reconcile this assertion, made at the moment of committing suicide, with the opinion entertained by some, that the cause of the murder was the deep aversion that the young man had nourished toward his step-mother during ten years?

"Evidently the language, as well as the termination of his life by suicide, is the work of a lunatic. Not the slightest doubt can now be felt even by the most prejudiced concerning the correctness of the decision, and the scientific foresight which led to that judgment."

In the debate that followed, M. Ferrus (eminent for his knowledge of medico-legal matters) remarked that it was very well that the young man had been acquitted, but he was affected with the worst form of mental alienation, and it was therefore a surprising circumstance that he should have been immediately set at liberty. Why, asked M. Ferrus, had he not been confined in a lunatic asylum?

M. Devergie replied that the matter was as

great a surprise to him as to M. Ferrus, for that all the experts had insisted on the necessity of removing the young man from society, as at any moment he might commit another act of insanity.

II.

COMMENTARY.

I HAVE selected the foregoing cases from the jurisprudence of a foreign country, in order that entire absence of all disturbing factors might be secured. They are perhaps as typical as any to be found in the whole range of insanity, in its medico-legal relations to crime. In each of them the plea of insanity was alleged in behalf of the accused. In the case of Léger it was entirely ignored by the jury, and he was promptly executed, to the general satisfaction of the nation. In the case of Jobard it was partially entertained, and he was found guilty, "with extenuating circumstances"—a verdict which in France saves the life of the prisoner. In that of Jules the theory of mental alienation was fully adopted by the jury, and the accused was set at liberty. It requires no very minute consideration of these cases to arrive at the conclusion that the action was not right in all. Certainly Léger was as insane as either Jobard or Jules, and yet he was executed. Certainly Jules was as re-

sponsible as either Léger or Jobard, and he was acquitted. Certainly Jobard was no more insane than Léger, nor more responsible than Jules, and yet he was sent to the galleys for life. Such inconsistencies show the great need of a fixed and definite principle by which all juries should be governed, and this is, I think, no difficult matter to establish.

At the very outset of an inquiry like the present, we are met by the question, What constitutes a crime? Many psychologists, and not a few jurists, declare that the essence of a criminal act resides in the intention, and in fact the law itself, as interpreted by many able courts, has frequently declared that, where there is no intention to commit a criminal offence, no such offence has been committed. But there is great danger in admitting such a construction, for, in doing so, we place ourselves at the mercy of any individual who with strong reformatory ideas, which he may think it his duty to carry out, stops at nothing in the way of his good intentions. Beccaria,[1] that most humane philosopher, who cannot be accused of undue severity toward those accused of crime, points this out very clearly, when he says:

"They err, therefore, who imagine that a crime is

[1] "An Essay on Crimes and Punishments. Translated from the Italian, with the Commentary by Voltaire, translated from the French." Fifth edition, London, 1801, p. 25.

greater or less according to the intention of the person by whom it is committed, for this will depend on the actual impression of objects, on the senses, and on the previous disposition of the mind; both will vary in different persons at different times, according to the succession of ideas, passions, and circumstances. Upon that system it would be necessary to frame not only a particular code for every individual, but a new penal law for every crime. Men often with the best intention do the greatest injury to society, and with the worst do it the most essential services."

That, on the plea of rectitude of intention, the most outrageous crimes against society may be justified, is evident when we recall to mind the practices of our ancestors as regarded heretics, witches, and sorcerers, whom they burnt at the stake with a purity of intention truly angelic. Clearly intention cannot constitute the essential feature of crime, for the best men are liable to err, and a mistake is frequently more productive of evil results than a deliberate crime. It is punished, often too, with far greater severity than a premeditated legal offence—both by law and by society outside of the law. Let a captain of an ocean-steamer make a mistake in his reckoning, and lose his ship on the rocks, and it would have been better for him that the sea had engulfed

him, than that he should have lived to tell the story of his mistakes and good intentions.

We are all likewise more or less apt to regard ourselves as being right, and the rest of the world wrong. So long as we hold this view without interfering with others, we only injure ourselves, and perhaps get laughed at for our egotism by others who are fully as egotistic. But, if we attempt to carry out our ideas to the detriment of society, the strong arm of the law, however worthy our intentions may be, should obviously be interposed for our repression.

Besides, the nature of crime should be so clearly defined that error in regard to its existence or extent should be impossible. If it is made to consist in the intention, there can rarely be any certainty on these points, for a shrewd person may so cleverly conceal his real purpose as to make discovery out of the question. Morally, as between man and God, the intention constitutes the sin, but society cannot look upon sin and crime as altogether identical, and it has not the infallible corrective of omniscience which constitutes so prominent a faculty of the Deity.

In former times, however, some such rule as this prevailed to a considerable extent, and it was no uncommon event for the Bible to be brought into court, and its precepts enforced by civil process. Charle-

magne ordered that all those who infringed the law of the Church in regard to fasting in Lent should be put to death; and in Poland those who violated the rules of abstinence prescribed by the Church had their teeth taken out.[1] Louis le Debonnaire of France decreed that all the orders of the Church should be sustained by the civil law throughout the whole empire.[2] The eating of meat on Friday was, therefore, not only a sin, but was made a crime.

The absence of intention may only properly be urged as regards the actual perpetration of the act. Thus, a person who aims a gun at a bird, and kills a man concealed in the shrubbery, is guilty of no crime whatever, because there was no intention to kill the man. Such unintentional acts may be committed by the insane as well as the sane.

Neither is the existence or extent of a crime to be determined by the position in society of the individual injured in life, person, or property. Before the law all should stand alike. To rob the chief-justice is no greater crime against society than to steal forcibly from the humblest citizen.

It seems clear, then, that, as Beccaria[3] asserts,

[1] "Observations on the Influence of Religion upon the Health and Physical Welfare of Mankind." By Amariah Brigham, M. D., Boston, 1835, p. 103.

[2] "Supplices Prisons et Grâce en France d'après des texts inédits." Par Charles Desmaze; Paris, 1866, p. 23.

[3] *Op. cit.*, p. 25.

"crimes are only to be measured by the injury done to society." Crimes of the highest degree being those which immediately tend to the dissolution of society, and of the lowest degree those which consist of the smallest possible injustice done to a private member. Law being only a set of rules and regulations by which society agrees to be governed for its convenience and protection, and there being no other guide as to the restraints and obligations of the individual members of society, it follows that a crime consists wholly and exclusively of a violation of law. Any act not expressly prohibited by law is legal, and cannot constitute an offence against society. Experience may, however, demonstrate that a particular act heretofore allowed is, in reality, injurious to society, and then a law is enacted against it.

Laws do not always rest, in fact cannot always be based, upon the principles of abstract justice. Every jurist knows that equity and law are very different, and that the one only governs when the other is silent. When necessity requires it, both law and equity are set aside, and brute force takes their place. This is especially the case during a state of war, when the public safety may necessitate the suspension of the most sacred rights and privileges of individuals. "*Inter arma leges silent*," is a maxim

expressing as much truth now as when Cicero first gave utterance to the words.

It is no valid argument against a law simply to demonstrate its abstract injustice. It must be shown to be injurious to society in order to be successfully attacked. What society requires is protection, and it has no more business as such with abstract justice than it has with any other bit of philosophy. Justice is to be enforced by law between man and man, not between society and man, unless in entire consistence with the great principle of protection, and in complete subjection thereto.

A law, therefore, may be unjust as regards an individual or a few individuals, and beneficial to society at large: it is then a good law. It may be just to an individual, and injurious to society at large: it is then a bad law. It is doubly good when it is both just and beneficial to all. It is doubly bad when it is unjust and injurious.

Such being the nature of crime and the scope of law, it follows that the object of punishment is chiefly the safety of society. Another end, the reformation of the individual who has offended against the law, is usually lost sight of, even in the most civilized communities, or else is only feebly attempted. But it ought to be more assiduously kept in view, not only because the offending individual has a nat-

ural right to be reformed, but because his reformation protects society, by converting a law-breaking person into a good citizen. Still, it must be confessed, that the paramount object of all punishment is the immediate safety of society, and that those punishments are most beneficial which most conduce to this end. Views change from age to age, and from year to year, relative to the efficacy of particular punishments, and doubtless still further changes will take place as society becomes more experienced. It may, however, be considered to be the settled policy of civilized society that punishment should be certain, that it should be proportioned to the offence, and that it should be of such a character as to secure the end arrived at, with the least possible bodily suffering to the criminal; and this latter not so much from any tender regard which society has for the feelings of offenders against the law, but mainly because experience has demonstrated that cruel or unusual punishments which have much of the character of revenge about them, are less effectual in preventing crime than those which are mild in character, and dignified in the manner of infliction.

The safety of society is supposed to be secured through punishment in two ways:

1. By the effect which it has upon the offending individual in intimidating him, in causing him to

suffer mental or physical pain as a sort of recompense which he owes to society for his crime, or in placing him in such a condition that it will be impossible for him for a limited period, or ever again, to break the laws.

2. By the example which is afforded to others who might feel inclined to commit crimes, but whose vicious inclinations are kept in check by the certainty or probability of the law taking hold of them, should they pass the prescribed bounds.

In providing for its safety, society has almost invariably carried out the maxim of securing the greatest good to the greatest number, and has therefore to a great extent disregarded the natural rights of individual persons. For example, it is certainly unjust to the individual to punish him for the violation of a law the very existence of which is unknown to him. Society does not care for this; safety for the property and lives of the majority is of paramount importance, and therefore the offender is fined, incarcerated, or put to death, according to the extent of his crime, notwithstanding the fact of his ignorance. And this it does not so much for the purpose of avenging the violation of the law, as to act upon others by the force of example, and to prevent the escape of criminals by a plea which it would be difficult in many cases to disprove.

The laws which formerly prevailed extensively, relative to attainder of blood for certain crimes, and which still exist in a more or less modified form in some countries, were likewise unjust to individuals. For acts of high-treason, not only were the offenders themselves put to death, but all their kindred within certain degrees were killed or banished, with forfeiture of estates; and even now, in the most enlightened nations of the earth—except our own—the heirs of a traitor who is punished with death are deprived of the property which in the natural course of events would have descended to them. Individuals are thus punished for a relation wholly beyond their control, in order that treason may be "made odious" and society protected. And, going higher, what can be more painful to our sense of abstract justice than the decree of the Almighty that "the sins of the fathers shall be visited upon the children?" Certainly the only object of such a law is that the fathers may be more effectually restrained from sin by the contemplation of the idea that their children will suffer for their delinquencies.

Looking at the matter, therefore, from a similar point of view, no valid argument can be adduced against the punishment of the insane, even though they be morally irresponsible for their acts by reason of delirium, dementia, morbid impulse, emotional

insanity, or any other form of mental aberration. It is reported of an English judge that he once addressed a criminal in these words:

"You have been convicted of the crime of murder. It has been alleged in your defence that you were actuated by an irresistible impulse. This may be true, but the law has an irresistible impulse to punish you, and it therefore becomes my duty to sentence you to be hanged."

In reference to such lunatics, a distinguished French magistrate observed to Marc, an eminent alienist: "*These men are madmen; but it is necessary to cure their mad acts in the Place de Grève.*"

These judical opinions are adduced not as meriting full approval, but merely to show how selfishly society protects itself even against insane violators of its laws.

The existence of a delusion is regarded in law as evidence of insanity, and the fact that an individual accused of crime has such a false conception of his mind is considered a valid defence. This is, doubtless, correct practice in many cases, but it should be understood that an act may be the direct and logical consequence of a delusion, and still be criminal. For instance, if I entertain the delusion that a certain person has injured me, I may be insane, but, even if I am, I ought to be punished if I kill the individual

who I imagine has done me a wrong. In the State of Massachusetts the law, as laid down by Chief-Justice Shaw, is that a delusion to be a valid defence must be of such a character as if, being true, the alleged criminal would be excused.

Beliefs as regards matters of faith, no matter how much they may be at variance with common-sense, and the opinions of mankind at large, cannot be considered delusions in the strict sense of the term, because they do not admit of either proof or refutation. They are not concerned with matters of fact, and should never, therefore, be held to acquit of responsibility for crime, however absurd they may be.

A case, illustrative of the view here expressed, occurred a few years ago. The following outline of the circumstances was published at the time in the London *Lancet:*

The prisoner, Charles Anderson, was convicted of deliberately taking the life of James Marchin, one of the crew of the ship Raby Castle, on her homeward voyage from Penang. The circumstances of the case were of an extraordinary character. The prisoner, on the 28th of September, 1866, shipped in the vessel as an able seaman and carpenter. It appears that during the voyage he gave many indications of an eccentric though weak intellect, of a perfectly harmless character. The deceased was a mu-

latto. The prisoner regarded him with apprehension, and was said to be under the delusion that Marchin was a Russian Finn. It appears that there is some extraordinary superstition among sailors, that the presence of a Russian Finn on board a vessel is likely to lead to the destruction of that vessel, together with the loss of the crew. The prisoner believed this. He was frequently heard to mutter to himself some incoherent expressions, to the effect that he could not go on in this way, and that he must kill the Russian Finn, or they would never get to London. On no occasion had any personal quarrel arisen, or ill-feeling been manifested between the prisoner and the deceased. Matters continued to go on in the same manner, the delusion of the prisoner being well known to, and regarded in a good-humored spirit by, his shipmates. No one anticipated the terrible result. During the night of the 24th of November the prisoner had to watch on deck, and, when free to act and unobserved, he seems to have gone to the bunk where the unfortunate deceased man was sleeping, and attacked him with a carpenter's axe, inflicting five desperate wounds upon his neck and shoulders, the effect of the former injuries being nearly to sever the head from the body. The prisoner was immediately suspected as the murderer. He was seen to be washing blood from his hands,

and to throw an axe overboard. He was at once seized and asked how he had come to murder his comrade. The reply he made was, that "if he had not done so, the ship would have gone on the rocks, and they would all have been lost." There had been a heavy gale of wind blowing at the time, and there appeared to be no doubt that he had committed the act under the impression that, if he did not kill the deceased, both his own safety and that of the crew would be endangered. Under these facts, notwithstanding the charge of the learned judge, the Baron Channell, the jury found the accused guilty of willful murder, ignoring the suggestion of any unsoundness of mind, and therefore withholding from the verdict any recommendation to mercy.

The learned judge accompanied the sentence of death with such observations as leave little doubt relative to the impression on his own mind, even though he condemned the prisoner according to law. He observed that "the jury had found themselves compelled to convict the prisoner of willful murder; and, as to the act itself, there was no doubt he had committed it. The defence set up was, that all the time he was laboring under a delusion which compelled him to commit the crime, and that, therefore, he was not responsible. It was not contended that he did not, on ordinary occasions, fully appreciate

the difference between right and wrong, but it was said that he was laboring under a delusion, and that the effect of this delusion was to compel him to commit the act. The jury have carefully considered the matter, and they have arrived at the conclusion that they are not justified, under the circumstances, in acquitting him on the ground of insanity, and it therefore became his duty to pass upon him the sentence of the law for the crime of murder." The prisoner bowed to the judge, and was then removed.

The sentence of Anderson was subsequently, on the recommendation of several medical gentlemen, commuted to imprisonment for life.

In regard to the propriety of Anderson's punishment there can be no reasonable doubt. Delusions such as his do not justify homicide, and, were a few like him severely punished, there would be less superstition and fewer delusions. While death is the penalty for murder, such lunatics as Anderson should be made to suffer it. His crime was deliberate and premeditated, and the fact that it originated in ignorance and false intellectual processes, though it may lessen his moral criminality, does not make it any safer for society to remit the punishment.

Again, some of the insane are such monsters of depravity that they should be slain, upon the same principle that we slay wild and ferocious beasts.

Such a one was the Alton murderer. On a fine afternoon a clerk in a lawyer's office took a walk out of town. He saw some little girls playing in a field near the road. One of them, a bright and lively child, he persuaded to go with him into an adjoining hop-garden, and sent the others home by giving them some half-pence. Shortly afterward he was seen alone, and he returned to his office and made an entry in his diary. The little girl was missed; her parents became alarmed. Upon inquiry, it was ascertained that she was last seen going toward the hop-garden, and, on searching there, her body was found cut up into small pieces. What she underwent before the butchery could not be ascertained, because parts of her body could not be found at all. Suspicion fell on the lawyer's clerk, and he was arrested. His desk was searched, and a diary found, in which was this newly-made entry: "Killed a little girl; it was fine and hot."

The evidence at the trial showed that a near relative of his father was in confinement, suffering from homicidal mania, and that his father had also been insane. It was likewise proved by many witnesses that the prisoner was unlike other people; that he was subject to attacks of melancholy, during which he would weep without evident cause; that his conduct had been capricious, and that it had been neces-

sary to watch him, for fear that he would commit suicide. Taking these circumstances into consideration, there is more than a reasonable probability that this wretch was insane. But the jury disregarded them; a verdict of guilty was rendered, and he was executed.

And can it be doubted that the following is another case of insanity, fully as well marked as any other cited in this memoir? It is related by an Italian correspondent[1] of the London *Times*:

"As a mere psychological curiosity, and an evidence of hardened villainy which it could hardly have been deemed possible for human nature to attain, I beg to be allowed to translate a few extracts from the reported trial of that Antonio Boggia, charged with a multiplicity of deliberate murders at Milan, to whom I have repeatedly alluded in some of my foregoing letters. You are aware that this Boggia was a house-porter in easy circumstances for one of his standing in life, very assiduous in the discharge of his religious duties, somewhat over-demonstrative in his display of zeal and devotion, and a darling of the Milan priesthood, who once got him out of a sanguinary scrape for which but for their interference he would probably have been, under the

[1] London *Times*, November 29, 1861. Also *Psychological Journal*, January, 1862, p. 3.

Austrian Government, hanged in time to disable him from the perpetration of subsequent offences. 'Imagine,' says the report, 'a little man about sixty-five years of age, with venerable gray hair carefully smoothed down on the temples and back of the head, an easy cheerfulness of countenance, an imperturbable calmness of speech, a spotless white neckcloth, the whole outward man would lead you to look upon him as a poor, aged wight brought into difficulty by some mistake, or in consequence of some deep-laid scheme of calumny. The president asks him by what circumstances he was led to do away with his last victim, the woman Perocchio, sixty-six years old, who had welcomed him to her house with the most perfect trust. Boggia begins by rubbing his hand, takes his handkerchief out of his pocket, wipes his mouth; then pulls out his snuffbox, and takes a good pinch; then, without a wink of the eye, no faltering of the voice, without a glimpse of remorse or compunction, he thus tells his atrocious tale: "What can I say to you, my lord president? We were there all alone; the old woman smiled; a whim or inspiration came upon me. I took up my hatchet and let it go at her head with so good an aim that she did not utter one cry. She was knocked down instantly and died quite easy. When she lay on the ground stretched out I sat down for a quarter of an hour

looking at her, and as I looked a fit of laughter seized me. I then went out for a little air and came back to sleep.

"'On the morrow I cut off the woman's legs, to be able to put her in my basket' (a kind of basket with handles used by street porters in Italy to carry burdens on their shoulders), 'to make it one job only, as I carried her to my cellar. When I had her in my cellar, I dug a goodly grave (*una brava fossa*) along the wall, took out the pieces of the old woman, laid them down in the grave very nicely, stretched out at full length, and there was an end of it!'

"'And Ribbone? What of Ribbone?' asked the court. This Ribbone was an old friend of Boggia; he lived in the same house. A good man, fond of Boggia's children, patted them on the head, bought them penny toys, took them out for a walk, and was quite intimate with the family. Boggia asked Ribbone for a loan of twenty lire. Ribbone promised to try to get them, but Boggia's impatience got the better of him. He found some pretext to decoy his poor friend into his cellar, asked him to look for something he had dropped on the ground, and as the other stooped he was over him with the formidable hatchet, which he had secreted under his cloak, and with one stroke on the nape of the neck he levelled him stone-dead with the ground!

"'But why did you kill him?'

"'Simply because he did not procure me the twenty lire I wanted.'

"On another occasion, after killing one Mazza, 'he went out of his cellar for a little air,' as he said, 'and walked along the canals to see the boats loading,' then came back at night and dug the usual grave. But the grave was not long enough; he doubled up the corpse as he best could, and left it to keep company with the other victim."

It is common to hear lawyers descant about the power of motive as influencing a person in the perpetration of a crime, and doubtless it is generally correct to hold that the absence of motive is either proof that the alleged offender is not the real perpetrator, or, if he is, that the act was done under the influence of a mistake, an accident, or mental aberration. Boggia was executed, but there can be little or no doubt of his insanity. Had his crimes and his trial taken place in this country or in Great Britain, he would probably have been acquitted, and perhaps even have been turned loose on the community to commit other atrocities.

All psychologists recognize the force of example. A man commits suicide in some unusual manner, and straightway this becomes the prevailing mode of accomplishing self-destruction. All are likewise famil-

iar with the principle called the "force of suggestion." An individual becomes melancholic from an exaggeration of his selfish instincts. His emotion might carry him no further, till suddenly he hears that a terrible murder has been committed. He eagerly reads the details; he broods over all the minutiæ, till they are assimilated to his own morbid thoughts. He perhaps learns that the perpetrator is insane, and will thus, probably, escape punishment. Nothing is, therefore, more in consonance with his ideas than to go and do likewise, and the suggestion soon ripens into a frightful reality. Let it be understood that such murderers will be punished, and they will the better control their morbid impulses.

That many of the insane possess great powers of self-control, is well known to all those who have studied the various phases of mental aberration. The influence of rewards and punishments is by no means nugatory, and a discipline very healthful to their disordered intellects or emotions can be thus brought to bear upon them. Every superintendent of a lunatic asylum knows that many of his worst patients can be improved in their conduct, mind, and character, by being rewarded when they deserve commendation, and punished when they have incurred censure. These rewards and punishments not only influence the patients directly concerned,

but are understood and commented upon by many of the others.

Thus, when Martin was arrested for setting fire to York Minster Cathedral, the circumstance was commented upon by the inmates of a lunatic asylum in the vicinity. The idea that he would be punished was scouted. "He is one of us," they exclaimed, "and of course is not responsible for his acts." It is certainly reasonable to believe that individuals, aware of their irresponsibility, would be capable of exercising a measurable control over their actions and impulses. I must, therefore, differ with that eminent psychological jurist, Mr. Francis Wharton, when he declares[1] that "it certainly will not be maintained that a consciousness of the legal relations of crime, such as this remark exhibited, confers responsibility where it does not otherwise exist." It is not that the consciousness confers responsibility, but that it indicates its existence.

Now, the same is true of the insane outside of asylums—and there are many such who pass through life scarcely suspected of being the subjects of mental aberration, but who simply wait for the exciting cause which is to bring their latent susceptibilities into action. Let them understand that in-

[1] "A Treatise on Mental Unsoundness, embracing a General View of Psychological Law." Philadelphia, 1873, p. 156.

sanity does not necessarily license an individual to do what he pleases without punishment, and a power is brought to the aid of their wavering intellects which may turn the scale definitely in their favor. It is not only for the safety of society, therefore, that insane criminals should be punished, but for the sake of other insane who are not yet entirely deprived of responsibility.

And even when mental aberration is well pronounced, the affected individual is often capable of controlling his actions, and at times of arresting the further progress of his disease. Thus, in the examination of Léger at his trial, the fact of previously-resisted temptations, and the fear of discovery, were clearly brought out. "Did you not," asked the president of the court, "often conceive the idea of carrying a woman to the cave?"

"I had the idea," replied the prisoner, "but I did not do it. Despair led me to take up my abode there. My mind was gone. I had desires, but I did not wish to gratify them."

"You have stated in your preliminary examination that you feared the resistance of an adult woman. Did you also fear that her cries would attract the attention of the passers-by?"

"Yes, sir."

And Jobard declared: "My action was criminal,

I know, and I went on toward it without reflection. If I could have thought correctly; if I could have confided my thoughts to some one and been advised, I would never have committed the deed." Might he not justly have been held responsible for his neglect to avail himself of all means likely to deter him from the commission of his crime?

And again we have Jules asserting: "If my father had addressed to me one word when I entered the drawing-room, a single word, whatever it might have been, I should not have killed my step-mother." He was undeniably insane, and yet how slight a circumstance would, by his own showing, have diverted him from the homicide!

Dr. Forbes Winslow,[1] in an article entitled "Unrecognized Insanity," thus relates the details of a case which came under his personal observation:

"We were consulted, some years ago, by an unmarried lady of about thirty years of age. She was healthy and robust in aspect, of strong, even masculine intelligence, which had been nurtured and directed by a brother, and her manners were calm and self-possessed. She had moved in a circle containing studious and thinking people, and had busied herself rather with the stern realities than the romance of our lot. She made the following confession:

[1] *Psychological Journal*, 1861, p. 659.

When passing by or near to a window in the street (and the plate-glass era had just commenced) she felt a strong inclination to break the panes; when in church and during sermon, but irrespective of its character and her devotional tendencies—she was pious though not a pietist—she was often impelled to shout or shriek aloud; and when intrusted with the care of an infant, which frequently happened, she was invariably tempted to crush it, or dash it down upon the floor. This applicant was fully aware that these dispositions were superadded to her natural character; she regarded them as criminal or morbid, she could gaze at, and, in a certain sense, speculate upon the impending ruin of her own mind; she concealed, repelled, struggled with, vanquished these impulses, and it was because the violence of her antagonists had increased, and because the victory had become doubtful, that she sought medical aid."

Dr. Thomas Mayo,[1] in an interesting memoir says: "Doubtless these symptoms, varying between eccentricity and insanity, but combined with vicious propensities, are often received into an asylum, when a prison would be more appropriate. I was told lately by Mr. Pownall, chairman, I think, of the Brentford Quarter Sessions, the following anecdote

[1] "On the Moral Phenomena of Insanity and Eccentricity," *Psychological Journal*, 1861, p. 176.

respecting Oxford, who afterward attempted the queen's life: Some time before that act, he was brought before Mr. Pownall and another magistrate, on account of some very eccentric cruelty shown to some fowls, and for this offence let off with a reprimand. Seeing Mr. Pownall some time afterward when in the penal wards of Bedlam, 'Had you,' said Oxford to that gentleman—'had you punished me when I was brought before you for that former offence, I should not now have been here.'"

"X——, aged twenty-five years, presented himself to M. Bérillon, commissary of police, and requested to be placed in a lunatic asylum. 'I am a school-master,' said he, 'and, without being absolutely insane, I experience, when I lay awake at night, strange sensations. Notwithstanding all my efforts, the idea seizes me with overpowering force that I must kill one of the pupils under my charge. Until now, notwithstanding that I have been on the point of strangling one of them, I have been able, by calling all my mental power into action, to conquer the impulse. But I am no longer master of myself, and the sight of a child would at once call my deplorable propensity into action. In coming to your office, I have averted my face so as not to see a child.' At this moment an officer entered with a boy whom he had arrested in the act of stealing. X—— at once became

violently excited, and would have seized the little vagabond had he not been prevented by the gendarme present. He was committed according to his wish." [1]

This case is very fully described by M. Dagonet,[2] the superintendent of the asylum in which X—— was placed, and his antecedents are shown to have been of such a character as to indicate eccentricity of mind from a very early period of his life.

In reference to such instances — and there are many more which it would be easy to bring forward —the scientific and legal questions to be considered are very different, and a great deal of the practical difficulty attendant upon them arises from the efforts made by physicians and jurists to reconcile pathology with law. Such attempts must always fail, for the reason that the professors of each science look at the subject from entirely different stand-points, and are actuated by different motives. The one class seeks to establish the existence of disease, the other is engaged in the effort to protect society. Both are right, but the views of neither should prevail to the exclusion of those of the others—for an individual may be at the same time insane and responsible for an infraction of the law.

This view is well maintained by Dr. Mayo in the

[1] *Journal de Médecine Mentale*, 1869, p. 317. [2] Ibid., p. 356.

paper already referred to. He says: "We cannot wait to clear up the question whether the definition of insanity, such as it ought to be, has been accomplished in the supposed case, so as to enable us to coerce it by a certificate of unsoundness of mind before it has reached a *Cenci dénoûment*, or such a one as Feuerbach brings forward in his work on jurisprudence, in which the lives of a whole family were saved by their concurring to put to death a homicidal father. The law will not permit the idea of insanity in the agent to plead his excuse when he knows that he is perfectly aware of the murderous tendency of his actions, and, in being unable to resist them, is only in the same predicament with every recognized aspirant to the gallows."

But, though some lunatics are responsible for their acts, there are others who clearly are not, whose intellectual faculties are so perverted or destroyed as to render them absolutely unaccountable for their actions. Punishment of them can only be justifiable solely in the interest of the safety of society, and should never extend beyond the deprivation of personal liberty. As to any rules for the determination of the degree of responsibility, none can be given, the decision being necesarily left to the examination of the phenomena of each individual case. As Bain[1]

[1] "The Emotions and the Will," second edition, London, 1865, p. 522.

says: "It is impossible to deal with such cases by a theoretical rule, they must be treated on their individual merits as they occur."

A case was recently tried at Rochester, in this State, in which a man, David Montgomery, subject to epilepsy, was charged with the murder of his wife. The deed was not denied, but the defence of insanity was set up, and it was attempted to be shown that, at the time of the commission of the homicide, Montgomery was unconscious. My opinion in the case was asked by the district attorney, and, after a careful consideration of the evidence and a minute personal examination of the prisoner, I testified that, though he was subject to epileptic convulsions and had a disease of his brain, he was conscious at the time of the murder, and that the act was premeditated and deliberate. Other physicians—Drs. Gray, of Utica, and Cook, of Canandaigua—differed with me in regard to Montgomery's responsibility. He was, however, convicted of murder in the first degree, and duly sentenced to be hanged.

An application for a new trial was refused by the Supreme Court. The opinion was delivered by Judge Mullin.[1] In it the learned judge makes the following remarks, which strike me as being dictated

[1] "Abbott's Practice Reports," new series, vol. xiii., People *vs.* David Montgomery.

not only by a sense of what is due to society, but as being based on common-sense, and not at variance with the facts of the case and sound pathology.

"While I am of opinion that, for some days before the killing, the prisoner was partially insane, and sometimes during that time more so than at others, there is no evidence that he was not capable of distinguishing right from wrong, at any time between noon on Saturday and the commission of the crime. Indeed, we might go further, and say that at no time, except when he was in one of his epileptic fits, is it proved that he was incapable of distinguishing right from wrong. Drs. Gray and Cook give it as their opinion that the disordered state of mind produced by one of those fits may continue for days, and the person having it be unconscious of what is passing, notwithstanding he may act and talk rationally during the time.

"If courts are to act upon this as an established fact, I do not see but that all attempts to punish such persons must be given up. If a man may be utterly insane, and yet act and talk rationally, it is impossible by any test to determine where responsibility for crime attaches. We may convict a person altogether incapable of committing a crime.

"I do not make these remarks because I doubt the correctness of the opinions of these learned and

intelligent gentlemen, but to say that while the greatest degree of care and caution must be exercised in determining the question of capacity to commit crime, yet we must hold the man responsible whose acts and declarations prove him so far wrong as to know that the act which he commits is by the laws of God and man wrong. If under this rule a person that is irresponsible is punished, it must be submitted to, or entire immunity must be given to persons proving insanity. I am of the opinion that the judgment was right and should be affirmed." [1]

Although not a test of insanity, the knowledge of right and wrong is a test of responsibility; and by knowledge of right and wrong is not meant the moral knowledge that a particular act would be intrinsically right or wrong, but, that it would be contrary to the law; or rather the individual need not actually have this knowledge, but, so far as his mind is concerned, he must possess the capacity to have it. For ignorance is no excuse, and the safety of society imperatively demands that all should take means to make themselves acquainted with the laws of the

[1] For a full account of this case, the reader is referred to my paper entitled "Medico-Legal Points in the Case of David Montgomery," *Psychological Journal*, January, 1872. Eighteen months elapsed before a final decision was reached. By that time the epilepsy, under which the prisoner undoubtedly suffered, had so far impaired his mind that it was deemed advisible to send him to the asylum for insane criminals at Auburn.

land in which they live. Now, any individual having the capacity to know that an act which he contemplates is contrary to law, should be deemed legally responsible, and should suffer punishment. He possesses what is called by Bain [1] punishability. If he does not possess this capacity, then he ought not to be allowed to go at large, for he is a greater enemy to society than one who with evil intent has nevertheless sufficient reason to guide him.

And as regards "irresistible impulse," it is doubtful if it ever exists even with the insane. That they have impulses which are *almost* irresistible is unquestionable. I have already brought forward several of this character in the present memoir, and others have occurred within the range of my own personal experience. Griesinger,[2] than whom there is no higher authority, says:

"The matter of determining if, with the insane, there are certain directions of the will, and certain tendencies which are irresistible, especially those which induce to criminal acts, and if so, how far they extend, are questions which have not yet been definitely answered. In the insane there are very few acts which are forced, or purely automatic move-

[1] "The Emotions and the Will," second edition, London, 1865, p. 520.

[2] Pathologie und Therapie des psychischen Krankheiten," Stuttgart, 1861, S. 47.

ments even in mania; and those who have recovered testify to this fact, to the ability which they possess to restrain in great part their wild impulses. The criminal acts of the insane have not ordinarily the characteristics of irresistible impulses."

Mr. Francis Wharton[1] refers with approval to Mr. J. S. Mill's remarks on this subject, in which this philosopher "supposes the case of a race of men whose hereditary tendencies are as great and uncontrollable as those of lions and tigers, than which, no case, brought up by the advocates of the unpunishability of those subject to irresistible impulses, could be more strong. Having supposed such men, he asks whether we would not treat them precisely as we would a wild beast, even though we supposed them to act necessarily. The highest theory of fatalism, he infers from this, is not inconsistent with the infliction of penalties on the offender. The question then, is, Is such punishment just? Can we justly punish a man for that which he cannot help? And he argues that we certainly can if announcing beforehand that such offenders are to be punished, and supporting the announcement by inflexible and uniform execution is the way to keep them from committing the obnoxious act. If the end—the prevention of crime — be justifiable, then the necessary

[1] *Op. cit.*, p. 128, § 148.

means for the prevention of crime are also justifiable."

And, eevn if actual cerebral disease be the cause of the irresistible impulse, it does not materially detract from the right of society to protect itself against injury from those in whom it exists. A dog afflicted with hydrophobia, going about snapping at those who come in its way, is destroyed in order that it may not bite us, and may not poison other dogs, who, in their turn, might bite us. The dog is suffering from a disease of its brain, which gives it an irresistible impulse to bite. We kill it without the slightest hesitation. We would be almost equally justifiable in killing the insane with irresistible impulses to commit homicide, if we did not possess places in which we could confine them safely.

Of course, the punishments awarded to the insane should be apportioned with regard to the nature of the crime, and the character of the insanity, and should thus extend from simple sequestration to fine and imprisonment with labor, and, in some cases, even to death—so long as death is, by law, the punishment for certain kinds of homicide. The only forms of insanity which, in my opinion, should absolve from responsibility and, therefore, from any other punishment except sequestration, are such a degree of idiocy, dementia, or mania, as prevents the in-

dividual from understanding the consequences of his act, and the existence of a delusion in regard to a matter of fact which, if true, would justify his act. Persons suffering from either of these forms of mental derangement should, in the interest of the safety of society, be deprived of their liberty.

But, the individual who has sufficient intelligence to know that pointing a loaded pistol at a human being, cocking it, and pulling the trigger, are acts which will cause the death of the person against whom they are directed, should be subjected to the same punishment for a homicide as would be awarded for a like offence committed by a sane person. And the insane person whose delusions are not such as would, if true, justify a homicide, should come under the same rule.

Emotional insanity, and volitional insanity, or irresistible impulse, should generally be allowed as much extenuating force as "heat of passion." The exceptions should be cases such as those of Léger and the Alton murderer, in which there was a deliberate purpose to commit murder or other crime.

And, in determining whether or not the person who has committed a crime was insane at the time, we should not, as is too generally done, merely consider the mental condition of the prisoner at the time the offence was perpetrated. All the previous

and subsequent circumstances, as well as those attendant upon the act, should be thoroughly investigated, and due weight should be given to those physical symptoms, the existence of which will always be revealed by careful examination. Insanity is only a manifestation of disease of the brain. Its basis is as much physical as is that of pneumonia, or valvular disease of the heart, or any other affection which all regard as bodily. It is no more possible for a person to be insane without other evidences of disease than mental derangement, than for pneumonia to exist with no other symptoms than disturbed respiration, or for valvular disease of the heart to be restricted in its manifestations to irregularity of the circulation of the blood. The doctrine that an individual can be entirely sane immediately before and after any particular act, and yet insane at the instant the act was committed, is contrary to every principle of sound psychological science. Even in the most striking instances of what is called transitory mania, or morbid impulse, the evidences of preëxistent and subsequent disease of the brain, will be found if they are looked for with skill and diligence and intelligence.

As to frenzy, which is really nothing more than intense emotional disturbance, its consideration does not come within the scope of this memoir.

An insane person deprived of his liberty on account of a murder, should never again be allowed to go at large. The danger of a relapse after a cure is always great, and a shrewd lunatic may very readily deceive those about him into the belief that he is cured, when, in fact, he is only planning his escape from durance. The books and journals devoted to the subject of mental diseases abound with cases of lunatics who have committed homicides after having been discharged from asylums as perfectly cured.

The insane should never, however, be confined in ordinary prisons. There ought to be penitentiary asylums in which insane criminals should be placed, and in which, while they are so securely kept as to render society safe from their propensities and weaknesses, their unfortunate conditions should come under such humane and scientific treatment as would be best calculated to afford amelioration and cure.

Finally, with all our care injustice to some extent will attend upon every legal process, and the attempt by man to reconcile the principles of abstract right with the customs, the obligations, and the necessities of society, will always be a vain effort. But he can at least console himself with the reflection embodied in the following extract from Tacitus—

that most eminent jurist and virtuous man—applicable particularly to acts of punishment against the insane: "Habet aliquid ex iniquo omne magnum exemplum, quod contra singulos, utilitate publica rependitur."

THE END.

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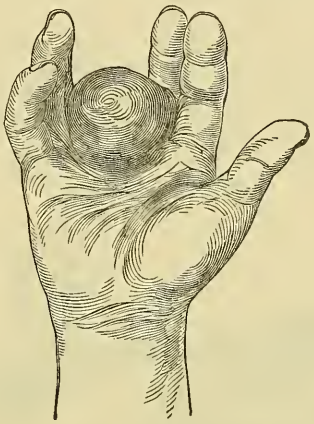
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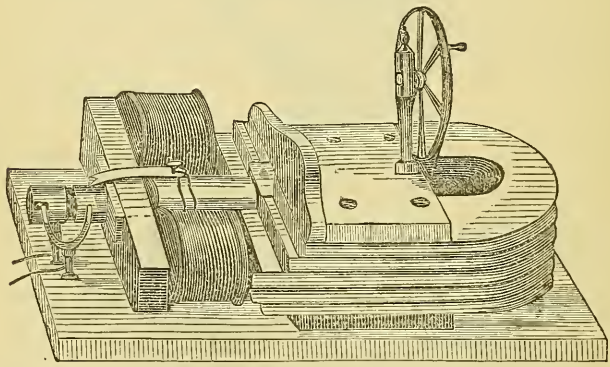
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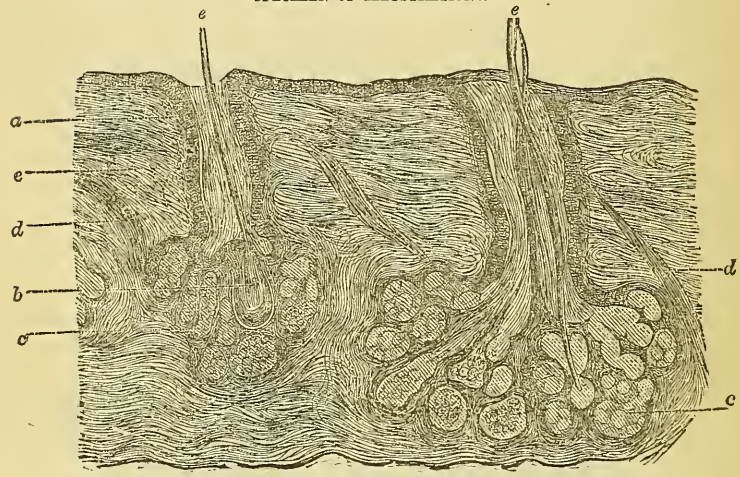
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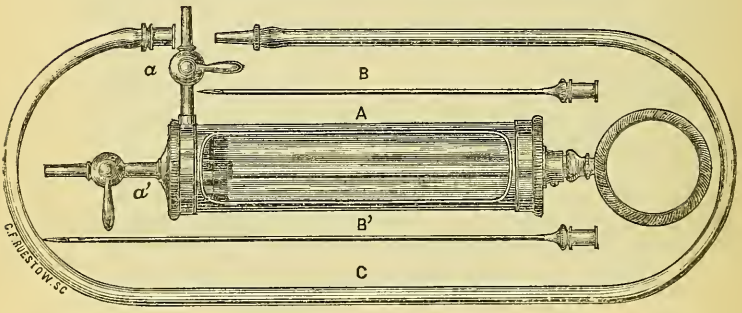
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